



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

February 13, 2007

Colonel Dionysios Anninos
District Engineer
Norfolk District
U.S. Army Corps of Engineers
803 Front Street
Norfolk, VA 23510-1096

RE: CENAO-TS-REG Public Notice # 05-R0222 (Tri City Properties, L.L.C.)

Dear Colonel Anninos:

In letters dated April 4, 2005 and April 28, 2005, the U.S. Environmental Protection Agency (EPA) provided comments to the Norfolk District on the above referenced project. In those letters, EPA recommended denial of the permit or preparation of an Environmental Impact Statement (EIS) prior to making any decision on the project. Our responses were prepared consistent with the Clean Water Act Section 404(q) Memorandum of Agreement Between the Environmental Protection Agency and the Department of the Army dated August 11, 1992 (MOA).

We have reviewed the supplemental information provided by the applicant in October 2005 and December 2006, as well as the Public Notice issued by the District on January 30, 2007. That information reports a significant increase in the acreage of wetlands being impacted by the proposed development. As a result, we continue to believe the application to be inconsistent with EPA's Section 404(b)(1) guidelines, and we continue to recommend that no permit be issued. Should the Corps decide to issue the permit over our objection, we again recommend the development of an Environmental Impact Statement (EIS) under the authority of the National Environmental Policy Act (NEPA) as we believe that issuance of the permit would constitute a major Federal action significantly affecting the environment.

Two issues are recommended for further consideration should a decision be made to prepare an EIS:

1. With regard to the wetlands that will be affected, we believe that an effective wetland functional analysis should be prepared based on the hydrogeomorphic (HGM) approach. As wildlife issues may prove to be significant, application of Habitat Evaluation Procedures (HEP) should also be considered—as a complement to and not a substitute for an HGM-based analysis.



2. Given the acreage of the wetlands at issue, and their location within the Stumpy Lake watershed, care should be given to evaluate the current and anticipated (i.e., post project) functional relationship between the wetlands and Stumpy Lake. Available information indicates that Stumpy Lake is part of the regional water supply system. Given that fact, we believe that impacts that could potentially exacerbate the eutrophication of Stumpy Lake may prove problematic.

Thank you for the opportunity to comment on the supplemental information and Public Notice. Based upon a January 17, 2007 communication from Mr. Robert Hume of your staff, it is my understanding that our ability to elevate under the MOA is retained by our previous letters. If that is not the case, I request additional time to provide a new "b" letter consistent with the MOA. Please let me know if the additional letter will be required. Should you have any questions or desire to discuss this matter further, please contact me or William J. Hoffman, Associate Director for Environmental Programs, at (215) 814-2995.

Sincerely,



John R. Pomponio, Director
Environmental Assessment & Innovation Division

Attachments (2)

CC: Dave Davis, Virginia Department of Environmental Quality
Kim Smith, US Fish and Wildlife Service

